IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

J U D G M E N T

S.B. Civil Second Appeal No.309/2004

Devendra Singh & Anr. Vs. Sahab Ram & Ors.

Date of Judgment :: 01-10-2004

S.B. CIVIL SECOND APPEAL UNDER SECTION 100 CPC AGAINST THE JUDGMENT AND DECREE DATED 24.8.2004 PASSED BY LEARNED ADDITIONAL DISTRICT JUDGE, NOHAR, DISTRICT HANUMANGARH.

HON'BLE MR. JUSTICE PRAKASH TATIA.

Mr. B.S. Charan, for the appellant.

Heard learned counsel for the appellant.

This appeal is against the judgment and decree of the first appellate Court dated 24.8.2004 by which the first appellate Court dismissed the appeal of the appellant which was filed against the judgment and decree dated 1.12.1997.

Brief facts of the case are that the plaintiffs claiming themselves to be the representatives of the public of the village filed one suit for mere injunction alleging therein that the land in question was reserved for the public use namely

for the Government quarters. The defendants were about to encroach upon the said reserved land, therefore, the plaintiffs filed the suit for injunction and prayed that the defendants be restrained from encroaching upon the land in question.

The defendants submitted written statement and counter-claim stating therein that the land measuring 1333 1/4 square yard was purchased by them from the Gram Panchayat. The Gram Panchayat issued Patta No.34 on 30.1.1990 in their favour. The defendants are in possession of the property in dispute and they have raised construction of boundary wall in three sides. They paid consideration of Rs.1050/- to the Gram Panchayat. They also raised construction of one Kotha but that was demolished by the plaintiffs on 19.2.1992. The defendants sought dismissal of the suit of the plaintiffs and prayed for decree in their favour against the plaintiffs, so that the plaintiffs may not interfere in peaceful possession of the defendants.

The trial Court framed two issues, whether the land in dispute is reserved for the Government quarters and another issue is, in case the land in dispute is Pattashud land of the defendants and defendants are in possession, then what is its effect on the suit. In the trial Court, plaintiffs produced witnesses PW-1 Devendra Singh, PW-2 Hardat Ram (both plaintiffs) and witnesses PW-3 Maniram, PW-4 Shankar Lal, PW-5 Ram Kumar. In rebuttal, Hardat Ram gave his statement again as PW-2. The plaintiffs produced certified copy of the chuk plan of the area Ex.1, site plan Ex.2, site inspection report Ex.P/3 and copy of the appeal which was filed for getting the cancelled Patta of the

defendants Ex.4. In defence, defendant No.1 and defendant No.2 both gave their statements and produced witnesses DW-3 Chandra Bhan and DW-4 Dulichand. The defendants produced Patta Ex.A/1.

The trial Court after trial, decided issue No.1 in favour of the plaintiffs holding that the land in question was reserved for Government quarters. The trial Court while deciding issue no.2 held that the land in question was sold to the defendants by the Gram Panchayat and Patta was issued to the defendants. It was further held that defendants are in possession of the property and Patta has not been cancelled despite the fact that according to plaintiffs, they challenged the Patta by filing appeal. The trial Court further held that the plaintiffs have not sought any relief of cancellation of Patta or declaring Patta to be null and void. While deciding, what relief can be granted to the plaintiffs, the trial Court held that plaintiffs failed to prove their personal interest in the land in dispute, therefore, no injunction can be granted. The trial Court ultimately dismissed the suit of the plaintiffs and decreed the counter-claim filed by the defendants and restrained the plaintiffs from interfering in the possession of the defendants or the land in dispute.

Being aggrieved against the judgment and decree passed on 1.12.1997, the plaintiffs also preferred appeal which was dismissed by the first appellate Court vide judgment dated 24.8.2004. Learned counsel for the appellant submitted that the courts below have held that appellant plaintiffs have no personal right in the property in dispute, therefore, no relief can be

granted. According to learned counsel, it is contrary to law. It is also submitted that the courts below concurrently decided issue no.1 in favour of the plaintiffs and held that the land in question was reserved for Government quarters and, therefore, the Patta issued in favour of the defendants by the Gram Panchayat are void ab initio and further, the Patta was issued in violation of the Section 88 of the Rajasthan Panchayati Raj Act, 1959 and in violation to the Rule 17 of the Rajasthan Colonisation (Grant of Land For Residence in Chak Abadi in Indira Gandhi Canal Area) Rules, 1971. Learned counsel for the appellant submits that plaintiffs filed the suit in representative capacity and, therefore, even if it is held that the plaintiffs have no personal interest in the land in dispute still the suit was maintainable and plaintiffs could have sought relief in the public interest and for the benefit of the public which includes the plaintiffs' own interest as member of the public village.

I considered the submissions of the learned counsel for the appellant. It is no doubt that the suit for public cause can be maintained by the public representatives and appropriate relief can be granted in a suit initiated by such representatives. In such of suits, it is not necessary that plaintiffs themselves should have some interest in the property in dispute itself. There is distinction between the personal interest litigation and public interest litigation. The public interest litigation in civil courts can be instituted by the representatives of the public for which there is specific provision which permits such type of suits and court can grant permission to the plaintiffs to maintain the suit under Order 1

Rule 8 CPC and under Section 91 of Code of Civil Procedure as the case may be. But in this case, the two courts below concurrently found that the patta was issued to the defendants by the Gram Panchayat as back as on 30.01.1990 and possession was delivered to the defendants . The defendants paid consideration of Rs.1050/- to the Gram Panchayat. The plaintiffs relied upon certain documents to show that the land was reserved for the public purpose for Government quarters. For this, plaintiffs produced copy of the chak plan, 1983 Ex.1 and copy of the area Ex.2 and site inspection report Ex.P/3. The trial Court after considering the basic document Ex.1 Chak plan which was relied upon by the learned counsel for the appellant, observed that Ex.1 Chak plan is only a proposal. The trial Court despite this observation merely on the basis of the oral statements of the plaintiffs held that the land has been reserved for the Government quarters as the oral statements of the plaintiffs have not been effectively rebutted by the defendants.

Contrary to it, the finding on issue no.2 recorded by the two courts below is that the Patta was issued by the Gram panchayat and possession was given to the defendants and defendants are in possession of the property and they have raised construction. The Patta has not been cancelled despite preferring appeal against the grant of Patta which is an admitted fact by the plaintiffs. The plaintiffs admittedly had not sought relief of cancellation of Patta and even had not sought relief of declaration to the fact that Patta may be declared null and void. Therefore, the ultimate fact remains is that validity of the Patta was not made a subject matter of issue in the suit by the

plaintiff. Despite appeal against grant of Patta, the plaintiffs could not get relief from competent authority.

In view of the above, if the courts below dismissed the suit of the plaintiffs and granted relief of injunction against the plaintiffs, so that they should not interfere in the personal possession of the land in dispute, the courts below have not committed any illegality. No substantial question of law is involved in this appeal.

Therefore, the appeal of the appellant is dismissed.

[PRAKASH TATIA],J.

Praveen